

104TH CONGRESS
2D SESSION

S. 1311

AN ACT

To establish a National Physical Fitness and Sports Foundation to carry out activities to support and supplement the mission of the President’s Council on Physical Fitness and Sports, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “National Physical Fit-
5 ness and Sports Foundation Establishment Act”.

1 **SEC. 2. ESTABLISHMENT AND PURPOSE OF FOUNDATION.**

2 (a) ESTABLISHMENT.—There is established the Na-
3 tional Physical Fitness and Sports Foundation (herein-
4 after in this Act referred to as the “Foundation”). The
5 Foundation shall be a charitable and not for profit cor-
6 poration and shall not be an agency or establishment of
7 the United States. The Foundation shall be established
8 as an organization described in section 501(c)(3) of the
9 Internal Revenue Code of 1986 and shall be presumed,
10 for purposes of such Code, to be such an organization until
11 the Secretary of the Treasury determines that the Foun-
12 dation does not meet the requirements applicable to such
13 an organization. Section 508(a) of such Code does not
14 apply to the Foundation.

15 (b) PURPOSES.—It is the purpose of the Foundation
16 to—

17 (1) in conjunction with the President’s Council
18 on Physical Fitness and Sports, develop a list and
19 description of programs, events and other activities
20 which would further the goals outlined in Executive
21 Order 12345 and with respect to which combined
22 private and governmental efforts would be beneficial;
23 and

24 (2) encourage and promote the participation by
25 private organizations in the activities referred to in
26 subsection (b)(1) and to encourage and promote pri-

1 vate gifts of money and other property to support
2 those activities.

3 (c) DISPOSITION OF MONEY AND PROPERTY.—At
4 least annually the Foundation shall transfer, after the de-
5 duction of the administrative expenses of the Foundation,
6 the balance of any contributions received for the activities
7 referred to in subsection (b), to the Public Health Service
8 Gift Fund pursuant to section 231 of the Public Health
9 Service Act (42 U.S.C. 238) for expenditure pursuant to
10 the provisions of that section and consistent with the pur-
11 poses for which the funds were donated.

12 **SEC. 3. BOARD OF DIRECTORS OF THE FOUNDATION.**

13 (a) ESTABLISHMENT AND MEMBERSHIP.—

14 (1) IN GENERAL.—The Foundation shall have a
15 governing Board of Directors (hereinafter referred
16 to in this Act as the “Board”), which shall consist
17 of nine Directors, to be appointed not later than 90
18 days after the date of enactment of this Act, each
19 of whom shall be a United States citizen and—

20 (A) three of whom must be knowledgeable
21 or experienced in one or more fields directly
22 connected with physical fitness, sports or the
23 relationship between health status and physical
24 exercise; and

1 (B) six of whom must be leaders in the
2 private sector with a strong interest in physical
3 fitness, sports or the relationship between
4 health status and physical exercise (one of
5 which shall be a representative of the United
6 States Olympic Committee).

7 The membership of the Board, to the extent prac-
8 ticable, shall represent diverse professional special-
9 ties relating to the achievement of physical fitness
10 through regular participation in programs of exer-
11 cise, sports and similar activities.

12 (2) EX OFFICIO MEMBERS.—The Assistant Sec-
13 retary for Health, the Executive Director of the
14 President’s Council on Physical Fitness and Sports,
15 the Director for the National Center for Chronic
16 Disease Prevention and Health Promotion, the Di-
17 rector of the National Heart, Lung, and Blood Insti-
18 tute and the Director for the Centers for Disease
19 Control and Prevention shall serve as ex officio, non-
20 voting members of the Board.

21 (3) NOT FEDERAL EMPLOYMENT.—Appoint-
22 ment to the Board or serving as a member of the
23 staff of the Board shall not constitute employment
24 by, or the holding of an office of, the United States

1 for the purposes of any Federal employment or other
2 law.

3 (b) APPOINTMENT AND TERMS.—

4 (1) APPOINTMENT.—Of the members of the
5 Board appointed under subsection (a)(1), three shall
6 be appointed by the Secretary of Health and Human
7 Services (hereinafter referred to in this Act as the
8 “Secretary”), two shall be appointed by the Majority
9 Leader of the Senate, one shall be appointed by the
10 Minority Leader of the Senate, two shall be ap-
11 pointed by the Speaker of the House of representa-
12 tives, and one shall be appointed by the Minority
13 Leader of the House of Representatives. The three
14 members appointed by the Secretary shall include
15 the representative of the United States Olympic
16 Committee.

17 (2) TERMS.—Members appointed to the Board
18 under subsection (a)(1) shall serve for a term of 6
19 years. A vacancy on the Board shall be filled within
20 60 days of the date on which such vacancy occurred
21 in the manner in which the original appointment was
22 made. A member appointed to fill a vacancy shall
23 serve for the balance of the term of the individual
24 who was replaced. No individual may serve more
25 than two consecutive terms as a Director.

1 (c) CHAIRPERSON.—A Chairperson shall be elected
2 by the Board from among its members and serve for a
3 2-year term. The Chairperson shall not be limited in terms
4 or service. The Chairman of the President’s Council on
5 Physical Fitness shall serve as Chairperson until a Chair-
6 person is elected by the Board.

7 (d) QUORUM.—A majority of the sitting members of
8 the Board shall constitute a quorum for the transaction
9 of business.

10 (e) MEETINGS.—The Board shall meet at the call of
11 the Chairperson, but in no event less than once each year.
12 If a Director misses three consecutive regularly scheduled
13 meetings, that individual may be removed from the Board
14 and the vacancy filled in accordance with subsection
15 (b)(2).

16 (f) REIMBURSEMENT OF EXPENSES.—The members
17 of the Board shall serve without pay. The members of the
18 Board shall be allowed travel expenses, including per diem
19 in lieu of subsistence, at rates authorized for employees
20 of agencies under subchapter I of chapter 57 of title 5,
21 United States Code, while away from their homes or regu-
22 lar places of business in the performance of services for
23 the Board.

24 (g) GENERAL POWERS.—

1 (1) ORGANIZATION.—The Board may complete
2 the organization of the Foundation by—

3 (A) appointing officers and employees;

4 (B) adopting a constitution and bylaws
5 consistent with the purposes of the Foundation
6 and the provision of this Act; and

7 (C) undertaking such other acts as may be
8 necessary to carry out the provisions of this
9 Act.

10 In establishing bylaws under this paragraph, the
11 Board shall provide for policies with regard to finan-
12 cial conflicts of interest and ethical standards for the
13 acceptance, solicitation and disposition of donations
14 and grants to the Foundation.

15 (2) LIMITATIONS ON OFFICERS AND EMPLOY-
16 EES.—The following limitations apply with respect
17 to the appointment of officers and employees of the
18 Foundation:

19 (A) Officers and employees may not be ap-
20 pointed until the Foundation has sufficient
21 funds to compensate such individuals for their
22 service. No individual so appointed may receive
23 pay in excess of the annual rate of basic pay in
24 effect for Executive Level V in the Federal
25 service.

1 (B) The first officer or employee appointed
2 by the Board shall be the secretary of the
3 Board who—

4 (i) shall serve, at the direction of the
5 Board, as its chief operating officer; and

6 (ii) shall be knowledgeable and experi-
7 enced in matters relating to physical fit-
8 ness and sports.

9 (C) No Public Health Service employee nor
10 the spouse or dependent relative of such an em-
11 ployee may serve as an officer or member of the
12 Board of Directors or as an employee of the
13 Foundation.

14 (D) Any individual who is an officer, em-
15 ployee, or member of the Board of the Founda-
16 tion may not (in accordance with the policies
17 developed under paragraph (1)(B)) personally
18 or substantially participate in the consideration
19 or determination by the Foundation of any mat-
20 ter that would directly or predictably affect any
21 financial interest of the individual or a relative
22 (as such term is defined in section 109(16) of
23 the Ethics in Government Act of 1978) of the
24 individual, of any business organization or other
25 entity, or of which the individual is an officer

1 or employee, or is negotiating for employment,
2 or in which the individual has any other finan-
3 cial interest.

4 **SEC. 4. RIGHTS AND OBLIGATIONS OF THE FOUNDATION.**

5 (a) IN GENERAL.—The Foundation—

6 (1) shall have perpetual succession;

7 (2) may conduct business throughout the sev-
8 eral States, territories, and possessions of the Unit-
9 ed States;

10 (3) shall locate its principal offices in or near
11 the District of Columbia; and

12 (4) shall at all times maintain a designated
13 agent authorized to accept service of process for the
14 Foundation.

15 The serving of notice to, or service of process upon, the
16 agent required under paragraph (4), or mailed to the busi-
17 ness address of such agent, shall be deemed as service
18 upon or notice to the Foundation.

19 (b) SEAL.—The Foundation shall have an official seal
20 selected by the Board which shall be judicially noticed.

21 (c) POWERS.—To carry out the purposes under sec-
22 tion 2, the Foundation shall have the usual powers of a
23 corporation acting as a trustee in the District of Columbia,
24 including the power—

1 (1) except as otherwise provided herein, to ac-
2 cept, receive, solicit, hold, administer and use any
3 gift, devise, or bequest, either absolutely or in trust,
4 of real or personal property or any income therefrom
5 or other interest therein;

6 (2) to acquire by purchase or exchange any real
7 or personal property or interest therein;

8 (3) unless otherwise required by the instrument
9 of transfer, to sell, donate, lease, invest, reinvest, re-
10 tain or otherwise dispose of any property or income
11 therefrom;

12 (4) to sue and be sued, and complain and de-
13 fend itself in any court of competent jurisdiction, ex-
14 cept for gross negligence;

15 (5) to enter into contracts or other arrange-
16 ments with public agencies and private organizations
17 and persons and to make such payments as may be
18 necessary to carry out its functions; and

19 (6) to do any and all acts necessary and proper
20 to carry out the purposes of the Foundation.

21 For purposes of this Act, an interest in real property shall
22 be treated as including, among other things, easements or
23 other rights for preservation, conservation, protection, or
24 enhancement by and for the public of natural, scenic, his-
25 toric, scientific, educational, inspirational or recreational

1 resources. A gift, devise, or bequest may be accepted by
 2 the Foundation even though it is encumbered, restricted
 3 or subject to beneficial interests of private persons if any
 4 current or future interest therein is for the benefit of the
 5 Foundation.

6 **SEC. 5. PROTECTION AND USES OF TRADEMARKS AND**
 7 **TRADE NAMES.**

8 (a) PROTECTION.—Without the consent of the Foun-
 9 dation, in conjunction with the President’s Council on
 10 Physical Fitness and Sports, any person who uses for the
 11 purpose of trade, to induce the sale of any goods or serv-
 12 ices, or to promote any theatrical exhibition, athletic per-
 13 formance or competition—

14 (1) the official seal of the President’s Council
 15 on Physical Fitness and Sports consisting of the
 16 eagle holding an olive branch and arrows with shield
 17 breast encircled by name “President’s Council on
 18 Physical Fitness and Sports”;

19 (2) the official seal of the Foundation;

20 (3) any trademark, trade name, sign, symbol or
 21 insignia falsely representing association with or au-
 22 thorization by the President’s Council on Physical
 23 Fitness and Sports or the Foundation;

24 shall be subject in a civil action by the Foundation for
 25 the remedies provided for in the Act of July 9, 1946 (60

1 Stat. 427; commonly known as the Trademark Act of
2 1946).

3 (b) USES.—The Foundation, in conjunction with the
4 President’s Council on Physical Fitness and Sports, may
5 authorize contributors and suppliers of goods or services
6 to use the trade name of the President’s Council on Phys-
7 ical Fitness and Sports and the Foundation, as well as
8 any trademark, seal, symbol, insignia, or emblem of the
9 President’s Council on Physical Fitness and Sports or the
10 Foundation, in advertising that the contributions, goods
11 or services when donated, supplied, or furnished to or for
12 the use of, approved, selected, or used by the President’s
13 Council on Physical Fitness and Sports or the Founda-
14 tion.

15 **SEC. 6. VOLUNTEER STATUS.**

16 The Foundation may accept, without regard to the
17 civil service classification laws, rules, or regulations, the
18 services of volunteers in the performance of the functions
19 authorized herein, in the same manner as provided for
20 under section 7(c) of the Fish and Wildlife Act of 1956
21 (16 U.S.C. 742f(c)).

1 **SEC. 7. AUDIT, REPORT REQUIREMENTS, AND PETITION OF**
2 **ATTORNEY GENERAL FOR EQUITABLE RE-**
3 **LIEF.**

4 (a) AUDITS.—For purposes of Public Law 88–504
5 (36 U.S.C. 1101 et seq.), the Foundation shall be treated
6 as a private corporation under Federal law. The Inspector
7 General of the Department of Health and Human Services
8 and the Comptroller General of the United States shall
9 have access to the financial and other records of the Foun-
10 dation, upon reasonable notice.

11 (b) REPORT.—The Foundation shall, as soon as prac-
12 ticable after the end of each fiscal year, transmit to the
13 Secretary and to Congress a report of its proceedings and
14 activities during such year, including a full and complete
15 statement of its receipts, expenditures, and investments.

16 (c) RELIEF WITH RESPECT TO CERTAIN FOUNDA-
17 TION ACTS OR FAILURE TO ACT.—If the Foundation—

18 (1) engages in, or threatens to engage in, any
19 act, practice or policy that is inconsistent with the
20 purposes described in section 2(b); or

21 (2) refuses, fails, or neglects to discharge its
22 obligations under this Act, or threaten to do so;

- 1 the Attorney General may petition in the United States
- 2 District Court for the District of Columbia for such equi-
- 3 table relief as may be necessary or appropriate.

Passed the Senate September 25, 1996.

Attest:

Secretary.

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